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Letter dated 5 April 2011 from the Chair of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

On behalf of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, I have the honour to submit the Committee's report on the practitioners' seminar on "Bringing terrorists to justice", held at United Nations Headquarters, New York, from 1 to 3 December 2010.

The Committee would appreciate it if this letter, together with the report, were brought to the attention of the members of the Security Council and issued as a document of the Council.

(*Signed*) H. S. Puri
Chair
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Report of the Security Council Committee established pursuant to resolution 1373 (2001) on the practitioners' seminar on "Bringing terrorists to justice", held at United Nations Headquarters from 1 to 3 December 2010

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I. Introduction

1. The Security Council, in its resolution 1373 (2001), decided that Member States should ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice. The resolution also charged the Security Council Counter-Terrorism Committee with monitoring and promoting implementation of the resolution.

2. The country visits of the Committee have shown that this requirement poses a major challenge for States' criminal justice systems. The prosecution of counter-terrorism cases relies on specific skills and expertise, and States' investigative, prosecutorial and judicial authorities have been forced to develop ways to deal with the increasing complexity of such cases, which often pose unusual and challenging case-management issues. Among the main challenges are the use of classified information, investigation methods, international cooperation, protection of witnesses, the use of sophisticated technology by terrorists and by counter-terrorism agencies, and links between terrorism and other forms of criminality.

3. The country visits have also demonstrated that, despite these challenges, it is possible for States to accomplish this objective and protect their populations from the threat of terrorism while adhering to rule-of-law principles and upholding human rights.

4. This was the basis for the Committee's decision to organize an innovative seminar on bringing terrorists to justice at United Nations Headquarters in New York. The seminar had two main objectives:

(a) To build upon States' successes in order to show the broader international community that different legal systems, dealing with different kinds of terrorism, have been able to meet the related challenges and find solutions allowing them to bring terrorists to justice effectively while respecting the rule of law and human rights;

(b) To enable the Committee and its Executive Directorate to build upon the experience and good practices developed and employed by counter-terrorism prosecutors by sharing and promoting them in its dialogue with international, regional and subregional organizations and Member States.

5. The seminar was attended by 19 prominent national counter-terrorism prosecutors who had personally handled the prosecution of some of the most heinous terrorist attacks carried out in recent history. They also represented different regions, different levels of development and different legal systems. In order to broaden the discussion, the Committee also invited representatives of several international, regional and subregional organizations that have specific and relevant interest in and knowledge of the prosecution of terrorism and run related capacity-building programmes. Experts from the Counter-Terrorism Committee Executive Directorate also participated in the discussions. The list of participants is attached as annex I to the present report.

6. Opening statements were delivered by the Deputy Secretary-General, speaking on behalf of the Secretary-General; the Chairman of the Committee; and the Executive Director of the Counter-Terrorism Committee Executive Directorate. The Deputy Secretary-General commended the lead role played by the United Nations in coordinating the international response to terrorism through the adoption of a series

of Security Council resolutions and the Global Counter-Terrorism Strategy, and noted that the United Nations had adopted a broad and integrated approach that involved education, development, conflict prevention and intercultural dialogue.

7. The Chairman of the Counter-Terrorism Committee described the Committee's efforts to increase Member States' awareness and its work to promote effective implementation of the relevant Security Council resolutions and enhance international and regional cooperation through country visits, briefings, thematic discussions, provision of technical assistance and assessment tools such as the global implementation survey.

8. The Executive Director of the Counter-Terrorism Committee Executive Directorate stated that after five years of monitoring the implementation of Security Council resolution 1373 (2001) by Member States, the Executive Directorate had begun to perceive counter-terrorism differently. Ratification of conventions was important, as were the adoption of legislation and the conclusion of bilateral extradition and mutual legal assistance treaties. However, such measures, which served as the initial indicators of implementation, merely scratched the surface. The Executive Directorate now realized that the biggest challenge in countering terrorism was to make those critically important tools work in practice. It increasingly saw that the added value of its work lay in helping States to address and resolve the practical difficulties that hampered the effective operation of Government counter-terrorism machinery. That mostly involved engaging in activities that brought together practitioners from States to think about ways of addressing the relevant challenges.

9. The first day of the seminar was divided into three panels, each of which dealt with a specific theme. The second and third days consisted of closed-door discussions, held under the Chatham House Rule. Committee members participated in all three days of the seminar. The programme is attached as annex II to the present report.

10. The final part of the seminar was dedicated to capacity-building in the area of prosecution of terrorism. The representative of the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime described the Branch's capacity-building programmes, its comprehensive database of legislation from over 145 States, its model treaties and legislation, its computer-based software for the drafting of mutual legal assistance requests, and its recently developed digest of terrorist cases. Representatives of the Commonwealth, the Inter-American Committee against Terrorism (CICTE), the Council of Europe and the Office of Prosecutorial Development Assistance and Training of the Department of Justice of the United States of America described their respective efforts to strengthen the prosecutorial capacity of Member States and strengthen regional and international organizations, and discussed their instruments, good practices and tools, and their ongoing activities in this area. The list of good practices identified by the practitioners is attached as annex III to the present report. The participants' attention was also drawn to the Committee's directory of international best practices, codes and standards for the implementation of Security Council resolution 1373 (2001), available at www.un.org/en/sc/ctc/bptable.html.

11. The Counter-Terrorism Committee Executive Directorate consolidated the presentations and the views expressed at both the open and closed sessions into a document for use by the international community, academics and practitioners. The

Executive Directorate will follow up on this seminar in relevant international and regional forums and meetings in which good practices and challenges are shared and serve as a basis for discussion. It will also aim to establish an informal network of practitioners that can enhance effective prosecutorial cooperation and offer the Committee and its Executive Directorate examples of good practices and common obstacles and provide feedback concerning their work on the effective prosecution of counter-terrorism cases.

II. Summary of discussions

A. International cooperation in counter-terrorism investigations and prosecutions

12. Security Council resolution 1373 (2001) requires all States to afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings. The international counter-terrorism instruments also require States to cooperate with one another, make terrorist offences extraditable and submit terrorists for prosecution if they are not to be extradited. The United Nations Global Counter-Terrorism Strategy and its action plan, adopted unanimously in 2006, reiterate this call.

13. Many seminar participants noted that, since terrorism and violent extremism represented a global threat that could be addressed only through global partnerships, effective international cooperation in criminal matters was key to Member States' efforts to bring terrorists to justice, and should therefore be enhanced and supported. Some participants provided useful examples of such cooperation, such as the over 12 years of cooperation between Kenya, the United Republic of Tanzania and the United States in the investigation and prosecution of the 1998 bombings of the United States embassies in Kenya and the United Republic of Tanzania. Another example was the cooperation between Belgium, France, the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the United States in the investigation and prosecution of the "shoe bomber" case, and the foiled attacks on the New York subway and New York's Times Square. Also, cooperation between the United Kingdom and the United States had resulted in the first extradition to the United States on "material support" charges.

14. Effective mutual legal assistance is key to successful prosecution of criminal cases, whose scope often extends to the territory of several States. In this context, the discussions focused on the most common obstacles encountered by prosecutors in obtaining assistance in counter-terrorism investigations; possible remedies and instruments to be used; the existing mechanisms for selecting the best competent jurisdiction at the national, regional and international levels; the role played by international and regional organizations (such as CICTE, the Commonwealth, the Council of Europe and the Gulf Cooperation Council) and how coordinating institutions (such as Eurojust or the Ibero-American Legal Assistance Network (IberRed)) could help ensure proper coordination between prosecutors.

15. Participants also discussed the challenge of admitting evidence collected in one State in another State, and situations in which the confession made by an alleged terrorist before police or investigating agency in one jurisdiction may not be admissible under domestic law in another State. Participants discussed potential

good practices in this area, such as the use of technology and alternative solutions such as enhanced harmonization of evidence law.

16. Eurojust led a discussion on the criminal justice approach in the European Union and joint investigations teams. Eurojust is a judicial coordination and cooperation body composed of 27 magistrates and prosecutors, with one representative for each State. It coordinates international cooperation in criminal matters within the European Union and offers assistance with requests for mutual legal assistance which can be executed in different member States at the same time. Additionally, Eurojust focuses on coordination meetings at the operational, tactical and strategic levels.

17. Another good practice discussed in the meeting was the use of joint investigation teams. Eurojust shared its model agreement with the participants. One European participant highlighted the importance of establishing joint investigation teams. These teams allow for complex cases to be coordinated among States, thereby facilitating the free flow of information among police, public prosecutors and judges. Under such arrangements, police from one State can investigate together with local police in another State, draw up allegations and charges, investigate and even conduct surveillance. In that respect, a number of bilateral cooperation arrangements was also discussed, such as the establishment by France and Spain of a permanent joint investigation framework to handle cases relating to Euskadi Ta Askatasuna-Basque Homeland and Liberty (ETA). Pursuant to this agreement, working group-level meetings are held frequently and each State maintains a permanent police presence in the other. This arrangement includes legal provisions that allow mutual recognition of evidence. Joint investigation teams are set up for each case, allowing both French and Spanish police officers and magistrates to cooperate in the investigation and notably in the conduct of operations, arrests, searches and the use of electronic and other evidence.

18. Participants agreed that joint investigative teams represented good practice, but also noted certain related challenges, including the high level of trust required to establish effective working relations, the need for timely exchange of information, complications stemming from unequal pace of investigations, and confidentiality issues.

19. Some participants highlighted the importance of liaison magistrates and the contribution of their presence to effective international cooperation. In particular, it was noted that the informal working relationship between liaison magistrates and national judicial authorities promoted better cooperation and effective mutual legal assistance.

20. Participants noted the role that judicial networks could play in enhancing international cooperation. One such example was the establishment of IberRed, a judicial network for cooperation among Latin American States. IberRed holds annual meetings to share problems and experiences and consider legislation, and allows prosecutors to cooperate without going through central authorities. Eurojust and IberRed have concluded a memorandum of understanding.

21. Certain presentations focused on the experience of prosecutors in handling extradition requests. In practice, as several participants noted, extradition processes are often long, complex processes that mix legal and political elements. Some participants mentioned that effective communication and an understanding of the

other State's domestic legal system increased the chance that an extradition request would be positively received by the requested State. Extradition requests are often subject to numerous legal challenges. Alleged perpetrators often challenge extradition proceedings on human rights grounds, alleging risk of mistreatment or the fact that they may not be given a fair trial in the requesting State. In order to address such concerns, participants noted, the requesting and requested States must often negotiate diplomatic assurances guaranteeing that the alleged perpetrator will be treated in accordance with international human rights standards.

22. Several participants echoed the view expressed in the Counter-Terrorism Committee guidance on international cooperation that States must expedite, simplify and give priority to extradition and mutual legal assistance requests in terrorism-related cases and make use of international and regional best practices in the field of extradition and mutual legal assistance, with due respect for human rights, fundamental freedoms and international refugee law.

23. With respect to the human rights aspects of extradition, one participant noted that if the subject of the extradition request is committed to detention, one of the first areas to be addressed is whether there are safeguards against arbitrary detention and hidden or unacknowledged detention. One aspect includes recognition of the principle of non-refoulement, especially if there is a risk of torture in the absence of minimum guarantees in criminal proceedings or, for States that have abolished the death penalty, in the absence of adequate guarantees. One presentation focused on the distinction between the political exception, which is increasingly excluded in terrorism cases, and prosecution on discriminatory grounds, which is a bar to extradition. Mention was also made of the controversy surrounding the adequacy of diplomatic assurances.

B. The role of the prosecution in counter-terrorism cases

24. Participants made clear that the prosecutor is at the heart of the criminal justice system and plays a critical role in States' efforts to bring terrorists to justice, and discussed the duties deriving from that role. They highlighted the responsibility to cooperate and work closely with all law enforcement agencies while ensuring that no misuses or abuses of authority occurred. Some expressed the view that the best way to achieve this was by developing a relationship of trust with all agencies involved in the investigation. Participants also highlighted the responsibility of the prosecutor before the court, and that the prosecutor must make sure both that the evidence brought to court is reliable and that the methods employed respect the rule of law.

25. Participants also discussed their experiences in dealing with witnesses and victims of terrorist acts. One presentation focused on the role played by victims and victims' associations, and noted some of the challenges involved. One participant shared her experiences in dealing with the prosecution of a terrorist attack that had occurred in 2002, both in a hotel and on an aeroplane. She noted that some witnesses and victims had initially refused to testify in the presence of the accused persons and that, when the prosecution prevailed upon them to testify, they suddenly refused to identify the accused, even though, in the pretrial conference, they had been sure that they would be able to do so. That case had underscored the need for speedy enactment of a witness-protection bill, which had been enacted in 2006.

Other challenges noted during the seminar were the need to relocate witnesses, the welfare of protected witnesses and the need to educate judges and prosecutors on the importance of protecting witnesses and providing victims with all their rights.

26. It was acknowledged that in many States, the victims of terrorism and victims' associations were very active and played an important role in speaking up and in engaging in the criminal process. Their role in the criminal process differed from State to State, but their interest in a successful outcome and their rights must be protected and cherished. Participants expressed the view that victims of terrorism had a right to expect that alleged offences be investigated thoroughly and prosecuted effectively, and that prosecutors needed to keep victims and their families informed, so that they did not feel excluded from the process, even if they could not always accept the outcome. The United Nations Office on Drugs and Crime highlighted some of its related activities, aimed at developing good practices in protecting and supporting victims of terrorism.

C. New challenges in the investigation and prosecution of terrorism

27. Many presentations highlighted the challenges that new technologies brought to the investigation and prosecution of terrorism. Many participants noted that prosecution of terrorism had become more complex, and some cases might even be regarded as "meta-cases" involving a large number of individuals. During the "public" part of the seminar, a prosecutor presented the investigation of consecutive suicide bomb attacks that had taken place in Istanbul. Several consecutive explosions had killed 60 people and injured 700. The case illustrated the complexity of terrorist investigations. Three investigative teams had worked on the investigation simultaneously, under the supervision of the prosecutor.

28. Among the issues discussed were the acceptance and admissibility of recording of evidence through video links and the use of electronic evidence in courts. Participants highlighted the benefits of forensic investigation networks to the prosecution of terrorist cases. It was noted that evidence in criminal cases increasingly included computers, external hard drives, thumb drives, compact disks and DVDs. Forensic investigation required that such electronic evidence be handled in accordance with internationally accepted standards. One presentation focused on the tools developed by one prosecution service to avoid direct access to the electronic hardware, including the making of identical images of its content and the use of "write-blocker" systems in order to avoid altering the archives of the operating system.

29. Participants also discussed the importance of the chain of custody of electronic evidence. Such measures were aimed at ensuring access to the relevant data by the appropriate persons and ensuring that the data were not altered or erased. One prosecutor showed how such techniques had been used successfully to dismantle terrorist networks.

30. Participants also noted the difficulty of authenticating hardware and electronic communications such as text messages and instant messages. Participants mentioned the pervasiveness of digital media in terrorist investigations, the burden that transcription and translation have on the prosecution and the need for training of law enforcement and judges in this field.

31. Terrorists' use of the Internet presents specific challenges to investigators and prosecutors, who must monitor Internet activity to detect offences and use appropriate criminal definitions, while also respecting due process and civil liberties. One participant shared his experience with a case involving electronic evidence that had ended in an acquittal, and recommended that, rather than blocking websites (a difficult operation, in view of their number, the ease with which they can be duplicated and the difficulties raised by courts in that regard), it would be better to monitor such sites and use them to gather intelligence on the working methods of terrorist organizations and identify the website users.

32. Participants discussed the influence of technological developments on terrorists' methods and, in consequence, on counter-terrorism investigations and prosecutions. Terrorist organizations were likely to operate in relatively small, loosely linked cells, and prosecution services had been forced to adapt accordingly. Many participants noted that prosecuting a small, well-known and highly structured unit in which the members' role and responsibilities were clearly defined could raise fewer challenges than prosecuting loose networks marked by changing identities and command. Moreover, a "one-size-fits-all" methodology was no longer sufficient, especially when one was attempting to prove relationships between individuals or membership of a terrorist group.

33. The United Nations Office on Drugs and Crime presented its "Digest of terrorist cases" which details judicial cases covering relevant aspects of the international legal regime against terrorism and highlights some new challenges faced by prosecutors, including criminalization of terrorist offences and the collection and sharing of information. It also addresses the link between terrorism and organized crime, especially in relation to drug trafficking and immigration fraud.

34. Another recent development to which prosecutors must pay increasing attention is the increasing involvement of the media, whether before, during or after the trial. Participants discussed the benefits of putting in place a media strategy and devising ways to convey accurate information about the case to the public. In one jurisdiction, the prosecutor often explains the charges to the media, sometime in advance. In others, the prosecution give press briefings in advance of the trial. There may also be post-trial briefings aimed at ensuring balanced coverage.

35. Participants noted that investigations were sometimes complicated by the fact that the police are primarily trained to secure law and order and that, in a number of jurisdictions, terrorism represents a new duty. In those States, prosecutors and law enforcement agents may lack expertise, forensic facilities and expertise in DNA comparison or video analysis. Several participants expressed the need to strengthen capacity-building efforts in that regard.

D. Prosecution of terrorism cases and prevention of terrorism

36. Although prevention of terrorism and prosecution of terrorists are two distinct concepts, participants highlighted the interrelationship of effective prosecution and prevention strategies. The United Nations and other major international and regional organizations have concluded that certain acts, such as financing of terrorism, incitement to terrorism and recruitment to terrorism, should be prohibited for preventive purposes because they may be indicators of a subsequent terrorist attack. Security Council resolution 1373 (2001) contains extensive provisions on

preventing the financing of terrorism and suppressing recruitment for terrorism. Similarly, Security Council resolution 1624 (2005) calls upon all States to prohibit by law incitement to commit a terrorist act. The rationale underlying this approach is that States, in order to prevent terrorist acts, also need to prosecute certain preparatory acts because, if they fail to do so, it may prove very difficult — if not impossible — to prevent the act itself.

37. Part of the discussion was dedicated to challenges and good practice in the prosecution of preventive offences. Participants shared lessons learned in prosecuting preventive offences. Some noted that, if intelligence had been properly shared, some attacks could have been avoided, and others referred to cases in which domestic plots had been foiled. One challenge identified in this context was determining when to intervene. The earlier the plot is uncovered, the less evidence there is to use for court proceedings. However, any delay may result in a successful attack.

38. During the "public" part of the seminar, the Council of Europe shared its experiences in implementing the 2005 Council of Europe Convention on the Prevention of Terrorism. Cases involving preventive offences raised a number of legal and policy issues, and States had developed differing approaches to deal with them. Reference was made to the decisions of the European Court of Human Rights regarding incitement to commit terrorist acts and the good practices developed by the Council of Europe outside the criminal justice process on issues such as interreligious and intercultural dialogue, public-private partnerships, measures against racial discrimination, education, media and integration of migrants.

39. One presentation focused on the measures taken by a prosecution service in a State applying sharia law to prosecute incitement to commit terrorist acts. The presentation showed how several State agencies (often following the conviction of a suspected terrorist) tried to counter terrorist beliefs by referring to Islamic sharia law. It also included details about the work of the ideological security department in the Ministry of the Interior and about a recently established centre for reforming the views of those who were vulnerable to recruitment. The centre runs rehabilitation programmes, for example, for convicted terrorists, and conducts psychological and social studies.

40. A representative of the Office of the High Commissioner for Human Rights spoke about international human rights issues in the context of prosecution and prevention of terrorism. He highlighted the obligation to uphold human rights in dealing with prevention, protection, investigation and prosecution of terrorism cases, and showed how compliance with human rights created trust in the criminal justice system and supported the broader preventive strategy. He also highlighted several potential obstacles to upholding human rights and rule of law obligations in the context of bringing terrorists to justice. Those potential obstacles, which could be exploited by terrorists for recruitment purposes, included vague and overly broad definitions of terrorism offences, the use of counter-terrorism laws to repress human rights defenders, excessive restrictions on the right to freedom of expression and torture and ill-treatment.

41. The seminar also included a panel on the investigation and prosecution of terrorism financing. One issue discussed in this context was the linkage between the investigation and prosecution of financing of terrorism and money-laundering. Differences between the financing of terrorism and money-laundering included

motivation, nature of financial resources, extent of proof and others, but the methods used to move funds were similar. Special attention should be paid to traditional organized criminal groups, such as those involved in drug trafficking, human trafficking and used-car theft, as they were sometimes linked to terrorist groups.

42. One jurisdiction had introduced into its legislation several offences to prosecute the financing of terrorism, including knowingly providing value to persons or groups engaged in terrorist activity; knowingly providing material support to a designated foreign terrorist organization; and knowingly providing or collecting funds with the knowledge or intention that the funds will be used to commit terrorist acts. Prosecutors in that jurisdiction shared their experiences, noting that the offence most often used was that of providing material support to a designated foreign terrorist organization.

43. Representatives of the same jurisdiction also identified their experiences in respect of the sources of funds used for terrorist financing. Those sources included State sponsors; fund-raising through non-governmental organizations and charities; donations from wealthy supporters; business fronts; and traditional criminal activities. Methods to facilitate the movement of funds included hawala, money exchange, check cashers, alternate value transfer services, front/shell companies, wire remitters and bulk cash smugglers/couriers. The jurisdiction had increased its focus on tracking terrorist financing with a view to disrupting and dismantling terrorist groups and their funding mechanisms.

44. One participant noted that establishing a close working relationship between the prosecution and various law enforcement agencies was key to the effective investigation and prosecution of terrorism financing cases. Her presentation included operational examples dealing with various methods of fund-raising, such as extortion, use of the Internet to solicit funds, use of gambling sites and use of "e-Gold". Some participants noted that Internet funding techniques and the use of new payment methods by terrorists were complex and often difficult to track. The targets were fast-moving and often anonymous. Another challenge in the prosecution of terrorism financing was that terrorists often self-financed their attacks and could cause considerable damage with relatively limited funds. Experience had shown that the modus operandi for raising funds constantly changed and that prosecutors and investigators therefore needed to exchange information more closely and more frequently. It was crucial, in that regard, for prosecutors to identify their foreign counterparts and develop informal mechanisms for information exchange.

E. The prosecution and counter-terrorism investigations

45. One major challenge discussed in the meeting was the use, in counter-terrorism proceedings, of special investigative techniques (e.g. interception, electronic surveillance, covert computer searches, observation, tailing, filming, handling of informers and undercover agents, etc.) and the use of intelligence material in criminal proceedings and the appropriate safeguards. Participants noted that there was a constant tension between keeping intelligence secret and the need for transparency in criminal proceedings.

46. Several good practices were shared in this regard. One participant said that in his State, the practice of disclosure in court of intelligence-obtained information was

such that the judge could disclose the information only if it was necessary to do so in order to establish the factual innocence of the suspect and the suspect had no alternative way to establish reasonable doubt. He also informed the participants that, in his country's legal system, even if the court ordered the disclosure, the Attorney General could still protect the information by issuing a certificate prohibiting disclosure, taking the risk that the defendant might be acquitted.

47. Some participants noted that the prosecutor played a crucial role in mitigating the tension between disclosure duties and the duty not to disclose. The prosecutor could help advise on the prospects for a potential prosecution and try to build the case in a way that avoided obstacles. Early engagement and building a relationship with intelligence was critical, and managing the information gathered was critical to the success of a prosecution. A number of participants highlighted the importance of dedicating time, during the investigation, to other criminal activities run by the terrorists' organizations. This might sometimes prove useful if the difficulties arising from the confidentiality of sources were such that it would be impossible to bring the terrorist charges without disclosing sources or methods.

48. Other aspects of that challenge were the amount of intelligence typically gathered in counter-terrorism investigations and the tools needed to decode the intelligence to make it comprehensible to jury and judges. One participant noted that targets who became aware of being under surveillance would often begin to talk in code, frequent Internet cafes and use sophisticated software to protect their computers. In one case, managing the huge amount of surveillance material had proved to be a real challenge in the trial.

F. Organization of the prosecution and its relationship with other agencies

49. Part of the discussion was dedicated to the structure of the prosecution office. Participants shared the mechanisms and organizational arrangements established by their jurisdictions for cooperation with other agencies such as the police, the financial intelligence unit, the immigration services, intelligence agencies, etc. Participants highlighted the importance of coordination, both at the national level and at the level of the prosecution, including the organization of the prosecuting team. Some highlighted the importance of resource allocation, strategic planning of operations using proper criminal analysis tools in order to make connections between individuals, and tools for storing and protecting a large volume of evidence.

50. Another jurisdiction, which faces a variety of terrorist threats, has centralized its counter-terrorism operations by authorizing only one prosecutor's office to handle such cases. It has developed a system of investigative judges authorized to allow all relevant investigative techniques, and its centralized operations includes a crisis cell unit that supports other prosecutors who are not part of the counter-terrorism unit. Counter-terrorism cases are handled in this jurisdiction by professional judges, in order to safeguard jurors against undue pressure.

51. With respect to responding to potential threats, one Member State noted that it had set up a counter-terrorism division consisting of prosecutors and police for investigation and prosecution. One prosecutor shared the added value derived by his State from the creation of such a national security division, which had led to

improved cooperation between prosecutors and law enforcement and intelligence agencies.

52. Participants also discussed organizing the prosecution so that it was able to cooperate effectively with international partners, including through mechanisms established for the centralization of cases, thus ensuring that information was exchanged between prosecutors and that no information was lost. A number of participants shared examples of the organization of their prosecutor's offices. One State had established joint intelligence task forces in each district, and participants from that State highlighted the need to develop informal working relations with other agencies through frequent meetings and regular updates.

53. Another participant outlined steps taken to strengthen his State's prosecutorial service and to bring uniformity into its national system. Those steps included the provision of guidance, the holding of joint meetings, the use of specialized reporting regimes to report on the progress of cases to higher authorities, the establishment of a facility to collect information, arrangements for assigning personnel to collect data and the submission of a consolidated report to higher authorities every six months. In terms of international cooperation, that State relied heavily on regional cooperation arrangements.

G. Concluding observations

54. Before concluding the seminar, the Committee Chair and the Executive Director of the Counter-Terrorism Committee Executive Directorate invited all participants to make brief observations about the seminar and the way forward. Many participants highlighted the importance of such gatherings and the unique opportunities that they provided for high-level prosecutors to engage with one another and to learn from each other's experiences. Some expressed a clear desire to build on their discussions by developing concrete proposals for models.

55. One participant highlighted the contribution of the event to her understanding of the magnitude and breadth of the problem, the role of international organizations and how to use their services. Another participant noted that she had learned a great deal about the available resources, including databases for developing cooperation among prosecutors.

56. The Executive Director concluded by stressing that the Counter-Terrorism Committee Executive Directorate would follow up on the seminar and continue its discussions with prosecutors in order to identify more challenges encountered in bringing terrorists to justice and to promote the good practices shared during the seminar.

Annex I

List of participants

Opening remarks

United Nations	**Asha-Rose Migiro**	**Deputy Secretary-General, on behalf of the Secretary-General**
	Ertuğrul Apakan	**Chair, Counter-Terrorism Committee**
	Mike Smith	**Assistant Secretary-General, Executive Director, Counter-Terrorism Committee Executive Directorate**

Speakers

Argentina	**Eduardo Ezequiel Casal**	**Public Prosecutor, Supreme Court of Argentina**
Australia	**Scott Bruckard**	**Senior Assistant Director, Commonwealth Director of Public Prosecutions, Melbourne Office**
Bosnia and Herzegovina	**Dubravko Čampara**	**Prosecutor, Public Prosecutor's Office of Bosnia and Herzegovina**
Canada	**Croft Michaelson**	**Senior General Counsel, Public Prosecution Service of Canada**
	Iona Jaffe	**Senior Counsel, Public Prosecution Service of Canada**
China	**Zhang Hanyu**	**Senior Prosecutor, Expert on the Fight against Organized Crime**
Colombia	**Hermes Ardila Quintana**	**Chief, Counter-Terrorism Unit, Colombia**
Egypt	**Ibrahim Salem**	**Second Secretary, Permanent Mission of the Arab Republic of Egypt to the United Nations**
France	**Juliette Le Borgne**	**Deputy Prosecutor, Counter-Terrorism Section, Public Prosecutor's Office**
India	**Ujwal D. Nikam**	**Special Public Prosecutor**
Indonesia	**Laksmi Indriyah**	**Head, Cooperation Unit, Task Force on Terrorism and Transnational Crimes**
Italy	**Stefano Dambruoso**	**Prosecutor, Head, Office for the Coordination of International Affairs, Ministry of Justice**

Iraq	**Hamid Al Bayati**	**Ambassador Extraordinary and Plenipotentiary, Permanent Mission of Iraq to the United Nations**
Japan	**Shintaro Sekiguchi**	**Attorney, Criminal Affairs Bureau, Ministry of Justice**
Kenya	**Mercy Wanjiru Gateru**	**Senior State Counsel, Department of Public Prosecutions**
Mali	**Fodié Touré**	**Public Prosecutor, II Commune, Bamako, Mali**
Pakistan	**Ahmad Farooq**	**Legal expert on counter-terrorism**
Russian Federation	**Elena Tsigankova**	**Senior Prosecutor, Third Unit of the Department of Extradition, Department of International Legal Cooperation**
Saudi Arabia	**Mousaed Bin Ahmed Al Hamad**	**Public Prosecutor for Terrorism Cases**
Spain	**Elvira Tejada**	**Chief, Technical Secretariat, General State Prosecution**
	Javier Zaragoza	**Head Prosecutor at the National Court**
Turkey	**Uzeyir Karabiyik**	**Expert judge, Department of International Mutual Legal Assistance in Criminal Matters**
United Kingdom of Great Britain and Northern Ireland	**Karen Jones**	**Crown Prosecution Service**
United States of America	**Michael Keegan**	**Principal Deputy Chief, Counter-Terrorism Section, National Security Division, Department of Justice**
	Ranganath Manthripragada	**Trial Attorney, Counter-Terrorism Section, National Security Division, Department of Justice**
	Christopher Lehmann	**Senior Regional Director for Counter-Terrorism and Asia/Pacific Programs, Office of Prosecutorial Development Assistance and Training, Department of Justice**

International and regional organizations

Inter-American Committee against Terrorism	Ignacio Ibañez	Manager, Legislative Assistance and Terrorism Financing Program
Commonwealth	Shirani de Fontgalland	Head, Criminal Law Section, Legal and Constitutional Affairs Division
Council of Europe	Marta Requena	Head of the Public International Law and Anti-Terrorism Division and of the Counter-Terrorism Taskforce of the Council of Europe
Counter-Terrorism Committee Executive Directorate	Mike Smith	Assistant Secretary-General, Executive Director
	Weixiong Chen	Acting Head, Assessment and Technical Assistance Office
	Edward J. Flynn	Senior Human Rights Officer
	Trevor Rajah	Senior Legal Officer; Coordinator, Legal Working Group
	David Scharia	Legal Officer
	Ahmed Seif El-Dawla	Chief of Section (Africa and Western Asia)
	Howard Stoffer	Head of the Administration and Information Office
Counter-Terrorism Implementation Task Force, United Nations	Zeeshan Amin	Political Affairs Officer
Eurojust	Michele Coninsx	Vice-President
Office of the United Nations High Commissioner for Human Rights	David Marshall	Human Rights Officer (Rule of Law)
Office of Legal Affairs, United Nations	Stephen Mathias	Assistant Secretary-General for Legal Affairs
United Nations Office on Drugs and Crime	Cecilia Ruthström-Ruin	Chief, Terrorism Prevention Branch
	Mauro Miedico	Coordinator, Specialized Terrorism Prevention Unit

Rapporteurs

Counter-Terrorism Committee Executive Directorate	**Marie-Laurence Cassegrain**	**Legal Officer**
	Marc Porret	**Legal Officer**
	Syed Haider Shah	**Legal Officer**
	Sue Takasu	**Senior Legal Officer**

Annex II

Programme

Day one: 1 December 2010

10.00-10.30 **Opening remarks**

Asha-Rose Migiro (Deputy Secretary-General, United Nations), on behalf of the Secretary-General

Ertuğrul Apakan (Chair, Counter-Terrorism Committee)

Mike Smith (Assistant Secretary-General, United Nations; Executive Director, Counter-Terrorism Committee Executive Directorate)

10.30-11.30 **Cooperating against terrorism**

Chair: Ertuğrul Apakan (Chair, Counter-Terrorism Committee)

Michael Keegan (Principal Deputy Chief, Counter-Terrorism Section, National Security Division, Department of Justice, United States of America)
International cooperation in bringing terrorists to justice

Eduardo Casal (Public Prosecutor, Supreme Court of Argentina)
The investigation of a terrorist attack: the Argentine experience

Elena Tsigankova (Senior Prosecutor, Third Unit of the Department of Extradition, Department of International Legal Cooperation of the Russian Federation)
The scope of cooperation in extradition cases

11.45-13.00 **The role of the prosecution in counter-terrorism cases**

Chair: Stephen Mathias (Assistant Secretary-General for Legal Affairs, United Nations)

Elvira Tejada (Chief, Technical Secretariat, General State Prosecution of Spain)
Spanish administration of justice: procedural and substantive model in the fight against terrorism

Mercy Gateru (Senior State Counsel, Department of Public Prosecutions of Kenya)
Witnesses and victims in counter-terrorism cases

Laksmi Indriyah (Head, Cooperation Unit, Task Force on Terrorism and Transnational Crimes, Indonesia)
Organization of the prosecution of terrorism cases in Indonesia

15.00-16.30	**Prosecution of terrorism cases and prevention of terrorism**
	Chair: Mike Smith (Executive Director, Counter-Terrorism Committee Executive Directorate, United Nations)
	Marta Requena (Head of the Public International Law and Anti-Terrorism Division and of the Counter-Terrorism Taskforce of the Council of Europe) *Criminalization and comprehensive prevention policies*
	Mousaed Bin Ahmed Al Hamad (Public Prosecutor for Terrorism cases, Saudi Arabia) *Saudi Arabian experience in prevention and incitement to commit terrorist acts*
	David Marshall (Office of the United Nations High Commissioner for Human Rights) *International human rights issues in the context of prosecution and prevention*
16.45-18.00	**Prosecuting terrorism in the twenty-first century**
	Chair: Cecilia Ruthström-Ruin (Chief, United Nations Office on Drugs and Crime Terrorism Prevention Branch)
	Uzeyir Karabiyik (Expert Judge, Department of International Mutual Legal Assistance in Criminal Matters of Turkey) *Techniques for the investigation of suicide bombing attacks: good practices and challenges*
	Stefano Dambruoso (Prosecutor; Head, Office for the Coordination of International Affairs, Ministry of Justice of Italy) *New challenges for prosecutors after "9/11"*
Day two: 2 December 2010	
10.00-11.30	**The prosecution and counter-terrorism investigations**
	Moderator: Mike Smith (Executive Director, Counter-Terrorism Committee Executive Directorate, United Nations)
	Croft Michaelson (Senior General Counsel, Public Prosecution Service of Canada) *Managing the relationship between intelligence and evidence*
	Scott Bruckard (Senior Assistant Director, Commonwealth Director of Public Prosecutions, Melbourne Office, Australia) *Framework for managing national security classified documents in counter-terrorism prosecutions in Australia*
	Javier Alberto Zaragoza (Head Prosecutor at the National Court of Spain) *Spanish experience on counter-terrorism investigations*

11.45-13.00	**Evidence and witnesses: challenges**
	Moderator: David Scharia (Legal Officer, Counter-Terrorism Committee Executive Directorate, United Nations)
	Ujwal D. Nikam (Special Public Prosecutor, India) *Evidence-gathering, admissibility and new challenges*
	Hermes Ardila Quintana (Chief, Counter-Terrorism Unit, Colombia) *The benefits of forensic investigation networks to the prosecution*
15.00-16.30	**Organization of the prosecution and its relationship with other agencies**
	Moderator: Shirani de Fontgalland (Head, Criminal Law Section, Legal and Constitutional Affairs Division, Commonwealth)
	Shintaro Sekiguchi (Attorney, Criminal Affairs Bureau, Ministry of Justice of Japan) *Organization and cooperation between police departments and public prosecutor's offices in combating terrorism*
	Juliette Le Borgne (Deputy Prosecutor, Counter-Terrorism Section, Public Prosecutor's Office of France) *Centralization and specialization in the French Prosecution*
	Zhang Hanyu (Senior Prosecutor; Expert on Fight against Organized Crime, China) *Methods to improve inter-agency cooperation within the international framework*
16.45-18.00	**Prosecution of financing of terrorism**
	Moderator: Trevor Rajah (Senior Legal Officer, Counter-Terrorism Committee Executive Directorate, United Nations)
	Michael Keegan (Principal Deputy Chief, Counter-Terrorism Section National Security Division, Department of Justice, United States of America) *The prosecution of terrorist financing*
	Karen Jones, Crown Prosecution Service, United Kingdom of Great Britain and Northern Ireland *The prosecution of terrorist financing: the United Kingdom Experience*

Day three: 3 December 2010

10.00-11.15 **International cooperation in counter-terrorism investigations and prosecutions: mutual legal assistance**

Moderator: Ignacio Ibañez (Manager, Legislative Assistance and Terrorism Financing Programme, Inter-American Committee against Terrorism)

Michele Coninsx (Vice President, Eurojust)
Criminal justice approach in the European Union and joint investigative teams

Dubravko Čampara (Prosecutor, Public Prosecutor's Office, Bosnia and Herzegovina)
The Bosnian experience in international legal assistance (case of Begtašević et al.)

11.30-13.00 **International cooperation in counter-terrorism investigations and prosecutions: extradition**

Moderator: Seif El-Dawla (Chief of Section, Counter-Terrorism Committee Executive Directorate, United Nations)

Fodié Touré (Public Prosecutor, II Commune, Bamako, Mali)
Mali's experience with extradition

Hamid Al Bayati, Ambassador Extraordinary and Plenipotentiary, Permanent Mission of Iraq to the United Nations

Iona Jaffe (Senior Counsel, Public Prosecution Service of Canada)
Canadian experience in extraditing terrorists to foreign jurisdictions

E. J. Flynn (Senior Human Rights Officer, Counter-Terrorism Committee Executive Directorate, United Nations)
Human rights, extradition and Security Council resolution 1373 (2001)

15.00-16.30 **Capacity-building in bringing terrorists to justice**

Moderator: Chen Weixiong (Acting Head, Counter-Terrorism Committee Executive Directorate Office of Assessment and Technical Assistance, United Nations)

Five-minute statements by: Marta Requena, Head of the Public International Law and Anti-Terrorism Division and of the Counter-Terrorism Taskforce of the Council of Europe; Cecilia Ruthström-Ruin (Chief, United Nations Office on Drugs and Crime, Terrorism Prevention Branch); Shirani de Fontgalland (Head, Criminal Law Section, Legal and Constitutional Affairs Division, Commonwealth);

Ignacio Ibañez (Inter-American Committee against Terrorism);

Zeeshan Amin, Political Affairs Officer, Counter-Terrorism Implementation Task Force, United Nations;

Christopher Lehmann, Senior Regional Director for Counter-Terrorism and Asia/Pacific Programs, Office of Prosecutorial Development Assistance and Training, Department of Justice, United States of America

16.45-17.30 **The way forward: open discussion and conclusion of seminar**

Chair: Ertuğrul Apakan (Chair, Counter-Terrorism Committee)

Moderator: Mike Smith (Executive Director, Counter-Terrorism Committee Executive Directorate, United Nations)

Annex III

List of good practices identified by participants

Inter-American Committee against Terrorism/ Organization of American States	Guide for the prevention, suppression and repression of terrorism financing	
Council of Europe	European Conventions on extradition (No. 24) and mutual assistance in criminal matters (No. 30) with their additional protocols	
	European Convention on Cybercrime (No. 185)	Chapter II (measures to be taken at national level) and chapter III (international cooperation)
	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (No. 198)	Chapter III (measures to be taken at national level) and chapter IV (international cooperation)
	Recommendation Rec (2006) 8 of the Committee of Ministers to member States on assistance to crime victims	Appendix
Counter-Terrorism Committee, United Nations	Policy guidance on international cooperation	
	Technical guide	
	Policy guidance regarding human rights	
United Nations Office on Drugs and Crime/ Commonwealth/ International Monetary Fund	Model provisions on money-laundering, terrorist financing, preventive measures and proceeds of crime, April 2009 (for common law legal systems)	Section 47 and drafting notes
United Nations Office on Drugs and Crime/Terrorism Prevention Branch	Model legislative provisions against terrorism	
	Tools and publication (terrorism prevention)	
	Digest of terrorist cases	
	Revised manuals on the model treaty on extradition	